

## **REMARKS**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### **I. Status of Claims**

Claims 1-12 are cancelled. Claims 13-20 have been added. The phrase “a hydrogen peroxide-treated yeast hydrolysate” in the original claims has been replaced by “a hydrolysate of hydrogen peroxide-treated yeast” in each of claims 13-20 for clarity. No new matter has been introduced.

### **II. 35 U.S.C § 112, 1<sup>st</sup> Paragraph, Rejections**

Original claims 1, 2, 4, 5, 7, 8, 10, and 11 (now claims 13-20, respectively) were rejected under 35 U.S.C. § 112, first paragraph, as lacking written description of the invention. The examiner alleges that because the present specification does not provide any evidence that “any and all” wrinkles in the skin can be prevented, the claims lack written description. The Applicants respectfully disagree and further submit that the instant specification indeed provides the phrase “to effectively prevent or ameliorate” (see for example Page 43). Neither “to effectively prevent” nor “to ameliorate” should be construed to mean that any and all wrinkles will be eliminated. Thus, the Applicants respectfully request the rejections be withdrawn.

### **II. 35 U.S.C § 103(a) Rejections**

Original claims 1, 2, 4, 5, 7, 8, 10, and 11 (now claims 13-20, respectively) were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 0205651, in view of Mausner (US 5,391,373). WO ‘651 teaches a yeast culture extract treated with hydrogen peroxide in a nutrient medium and such is used in creams for cosmetic purposes, and Mausner teaches a composition optionally comprising glycosaminoglycans, which are routinely used in cosmetics. The Examiner thus alleges that it would be prima facie obvious to combine the ingredients of WO

'651 and Mausner (i.e., yeast extract and glycosaminoglycan, respectively) to form a composition that is useful for the same purpose as the ingredients. The Applicants respectfully disagree.

The Supreme Court recently reaffirmed the Graham factors for determining obviousness in *KSR Int'l Co. v. Teleflex Inc.* (No. 04-1350) (U.S., April 30, 2007). The Graham factors, as outlined by the Supreme Court in *Graham et al. v. John Deere Co. of Kansas City et al.*, 383 U.S. 1 (1966), are: 1) determining the scope and contents of the prior art; 2) ascertaining the differences between the claimed invention and the prior art; 3) resolving the level of ordinary skill in the pertinent art; and 4) evaluating evidence of secondary consideration. The Supreme Court recognized that a showing of "teaching, suggestion, or motivation" to combine the prior art to meet the claimed subject matter could provide a helpful insight in determining whether the claimed subject matter is obvious under 35 U.S.C. § 103(a), and held that the proper inquiry for determining obviousness is whether the improvement is more than the predictable use of prior art elements according to their established functions. The Court noted that it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed, and specifically stated:

Often, it will be necessary . . . to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was ***an apparent reason to combine the known elements in the fashion claimed*** by the patent at issue. To facilitate review, this analysis should be made explicit.

*KSR Int'l Co. v. Teleflex Inc.*, slip op. at 14 (emphasis added). As discussed below, the cited art cannot render the claimed invention obvious.

Without acquiescing to the grounds of rejections, each of the new claims 13-20 now recites "a hydrolysate of hydrogen peroxide-treated yeast, which has been cultured in a nutrient medium containing a non-animal-derived glycosaminoglycan." The support of this limitation can be found, for example, in that "Biodynes ® EMPP" described in the specification

corresponds to the yeast hydrolysate being claimed in this application, which is prepared by culturing yeast cells (such as *Saccharomyces cerevisiae* cells) in a nutrient medium containing a non-animal-derived glycosaminoglycan in the presence of hydrogen peroxide (see, for example, page 6, line 26 to page 6, line 15).

WO '651 teaches a yeast extract with a purpose to provide protection to cells from radiation damages (see, for example, Summary of WO '651), and Mausner teaches a composition optionally comprising glycosaminoglycans (see, for example, Abstract of Mausner). However, the compositions being claimed in this application do not comprise a combination of both hydrolysate and glycosaminoglycan. Rather, they comprise a hydrolysate that was cultured in a medium, and it was the medium that comprises glycosaminoglycan. Thus, one of skill in the art would not have been motivated to combine WO '651 with Mausner to form the compositions being claimed herein. Additionally, the claimed compositions provide unexpected results over both WO '651 and Mausner, such as promoting cell growth (e.g., collagen) and/or collagen contraction. Therefore, the cited references do not suggest the teaching being claimed in this application, and the obviousness rejections should be withdrawn. *See KSR Int'l Co.*

The Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of

time are needed for timely acceptance of papers submitted herewith, the Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By 

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